



## Office of the Public Defender State of Hawai'i



### Testimony of the Office of the Public Defender, State of Hawai'i to the Senate Committee on Judiciary

February 21, 2019

S.B. No. 1175: RELATING TO COVERED OFFENDER REGISTRATION

Chair Rhoads and Members of the Committee:

The Office of the Public Defender opposes S.B. No. 1175.

This measure would expand the definition of “sex offender” to include a person who has been charged with a “sexual offense” and had the charge dismissed pursuant to HRS § 706-607 (civil commitment in lieu of prosecution or sentence) and has been involuntarily hospitalized. Moreover, this measure would subject the person to registration.

First, unlike a person who has been convicted of a sexual offense or who has been acquitted due to a physical or mental disease, disorder, or defect pursuant to HRS chapter 704, a person whose charge was dismissed and civilly committed (i.e., hospitalized) never had the opportunity to defend or admit whether he/she committed the sexual offense. Such a person is presumed innocent unless and until the State proves his/her guilt beyond a reasonable doubt. This measure, however, presumes such a person to be a “sex offender” even though the allegation of a sex offense has not been admitted by the person or proven by the prosecution. Consequently, the person will be required to register pursuant to HRS § 846E-2 based only upon an allegation of committing a sexual offense, and the public will be permitted to have access to the person’s registration information.

Moreover, one of the purposes to proceed by civil commitment in lieu of prosecution is to substantially further the rehabilitation of the person. *See* HRS § 706-607(2). Classifying such a person as a “sex offender” and subjecting him/her to registration appears to contradict the stated purpose. Registration and the release of the public information (pursuant to HRS §846E-3) will certainly not assist in the rehabilitation of the person.

Finally, involuntary civil commitment proceedings are confidential. Requiring a person whose charge had been dismissed pursuant to HRS § 706-607 (civil commitment in lieu of prosecution or sentence) and had been involuntarily hospitalized to register as a “sex offender” pursuant to HRS § 846E-2 and permitting the public to access registration information essentially removes the confidential nature of involuntary civil commitment proceedings.

Thank you for the opportunity to comment on S.B. No. 1175.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1175, RELATING TO COVERED OFFENDER REGISTRATION.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Thursday, February 21, 2019      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Paul R. Mow, Deputy Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to provide uniformity by adding wording relating to covered offender registration requirements when the defendant is charged with a covered offense and subject to involuntary hospitalization under section 706-607, Hawaii Revised Statutes (HRS), or the charges are dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS, or comparable federal and out-of-state dispositions. Currently, registration under chapter 846E, HRS, is required by offenders charged with a covered offense and acquitted due to a physical and mental disease, disorder, or defect pursuant to chapter 704, HRS, but is not required when the offender had the charges dismissed by reason of physical or mental disease, disorder, or defect pursuant to chapter 704, HRS, or is involuntarily hospitalized under section 706-607, HRS. The current law also does not apply to federal or out-of-state dispositions comparable to chapter 704, HRS. The passage of this bill will allow the public and other entities who check the covered sex offender and offender against minor registry to be aware of these offenders' registration status.

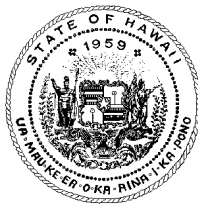
Additionally, the bill clarifies that persons required to register pursuant to section 846E-2(b), HRS, will be considered a "sex offender." Currently, certain out-of-state offenders are required to register pursuant to section 846E-2(b) without regard to

whether the offender otherwise meets the criteria of a covered offender in the State of Hawai'i. However, certain out-of-state offenders cannot be added to either the registry or public website because they do not meet the current definitions of either "sex offender" or "offender against minors" under section 846E-1, HRS.

Lastly, the bill clarifies that criminal justice agencies charged with administering the covered offender registration program are authorized to access confidential registration information. The current statute only allows law enforcement agencies, which is a subset of criminal justice agencies, to access confidential registration information. Agencies such as the Hawaii Paroling Authority, the Department of Public Safety – Correctional Division, and the Judiciary's Adult Client Services Branch are not currently authorized to receive confidential registration information. Granting criminal justice agencies access to confidential registration information will ensure that clients under their supervision and inmates being released are compliant with chapter 846E, HRS.

We respectfully ask the Committee to pass this bill.

DAVID Y. IGE  
GOVERNOR



NOLAN P. ESPINDA  
DIRECTOR

Maria C. Cook  
Deputy Director  
Administration

Jodie F. Maesaka-Hirata  
Deputy Director  
Corrections

Renee R. Sonobe Hong  
Deputy Director  
Law Enforcement



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 1175  
RELATING TO TO COVERED OFFENDER REGISTRATION.

by

Nolan P. Espinda, Director  
Department of Public Safety

Senate Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Glenn Wakai, Vice Chair

Thursday, February 21, 2019; 10:00 a.m.  
State Capitol, Conference Room 016

Chair Rhoads, Vice Chair Wakai and Members of the Committee:

The Department of Public Safety (PSD) supports Senate Bill (SB) 1175, which proposes to: (1) amend chapter 846E, Hawaii Revised Statutes ("HRS"), the covered offender registration law, to require registration of defendants who have had covered offenses dismissed due to physical or mental disease, disorder, or defect; or were acquitted by reason of physical or mental disease, disorder, or defect, or have been involuntarily hospitalized in lieu of prosecution; (2) clarify that persons required to register pursuant to Section 846E-2(b), HRS, are covered offenders; and (3) clarify that criminal justice agencies may access registration information.

This bill is necessary in order to provide consistency in situations where the defendant is found to have diminished mental capacities. Importantly, for PSD, this bill will allow the Hawaii Paroling Authority access to confidential registration information to ensure its clients under supervision and inmates being released are compliant with chapter 846E, HRS.

Thank you for the opportunity to present this testimony.

**SB-1175**

Submitted on: 2/16/2019 3:35:16 PM

Testimony for JDC on 2/21/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments: